APPENDIX A

Opinion of the Court of Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22211

ROBERT R. FRANK,

Appellant,

versus

LAURIE W. TOMLINSON, District Director of Internal Revenue,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(October 8, 1965.)

Before TUTTLE, Chief Judge, THORNBERRY, Circuit Judge, and CARSWELL, District Judge.

PER CURIAM: This is an appeal by a taxpayer-lawyer from an order by the district court, entered at the instance of the District Director of Internal Revenue requiring appellant to produce "all books, records and documents sought . . . excluding, however, copies of any privileged communications from the Respondent's clients to

the Respondent, or from the Respondent to his clients." The order further provided that:

> "No attorney-client privilege attaches to records showing the names of the Respondent's clients, nor the books, records and documents showing property of said clients in the hands of the Respondent."

We agree with the statement in *Colton v. United States*, 2 Cir., 306 F.2d 633, that "the identity of a client, or the fact that a given individual has become a client are matters which an attorney normally may not refuse to disclose, . . ." The order entered by the trial court here reserves to the court the opportunity to resolve any question that may arise by reason of the court's authorizing appellant to withhold copies of any privileged communications between the lawyer and his client. With this saving provision included in the order, we find that the trial court did not err in requiring the production of the books, records and documents as requested.

The judgment is AFFIRMED.

APPENDIX B

Section 7602 of the Internal Revenue Code of 1954: 26 United States Code § 7602

EXAMINATION OF BOOKS AND WITNESSES.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

CODE OF ETHICS (31 Florida Statutes Annotated 755):

Rule B. Ethics Governing Attorneys

* * *

37. **Confidences of a Client.**—It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation. The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened.

* * *

App. 5

Oath of Admission

* * *

I do solemnly swear:

* * *

I will maintain the confidence and preserve inviolate the secrets of my client, * * *

Additional Ethics Governing Attorneys

In addition to the foregoing ethics as promulgated, the members of the Bar of this state shall be governed by the following ethics and principles:

Rules Governing the Conduct of Attorneys in Florida
Section (II)

* * *

4. To maintain inviolate the confidence and, *at every peril to themselves*, to preserve the secrets of their clients. [emphasis supplied]

APPENDIX C

SUGGESTION FOR CERTIFICATION TO THE SUPREME COURT OF FLORIDA

COMES NOW the appellant, by and through his undersigned attorneys, and respectfully suggests to the Court that prior to rendering a final decision in this cause, the following question should be certified to the Supreme Court of Florida:

> Under the circumstances of this case, does the attorney-client privilege extend to records showing the names of an attorney's clients and their property or monies in his hands?

and as grounds therefor shows the following:

1) The determination of the question involved in this appeal:

> Where he has been advised that such information will not be held confidential, may an attorney at law be required to make a wholesale disclosure of his trust accounts, showing the names of his clients, their trust agreements, and their property in the attorney's hands, where a summons is served in connection with an investigation of the attorney's own income taxes?

necessarily depends upon the answer to the above question.

2) As there is no federal common law on the subject of attorney and client, the proper substantive law to be applied is necessarily the law of Florida. *Baird v. Koerner*, 279 F.2d 623, 95 ALR 2d 303 (CA 9 Cal., 1960); *Van Wie v. United States*, 77 F.Supp. 22 (DC Iowa, 1948);

Magida on behalf of Vulcan Detinning Co. v. Continental Can Co., 12 FRD 74 (DC NY, 1951) (by implication); *Leonia Amusement Corp. v. Loew's, Inc.*, 13 FRD 438 (DC NY, 1952); *United States v. Becton Dickinson & Co.*, 212 F.Supp. 92 (DC NJ, 1962, *Spray Products Corp. v. Strouse, Inc.*, 31 FRD 244 (DC Pa., 1962); *Garrison v. General Motors Corp.*, 213 F.Supp 515 (DC Cal., 1963); and *United States v. Ladner*, ___ F.Supp. ___, 65-1 USTC ¶9194 (DC Miss., 1965).

3) The authority to make such certification is provided by Florida Statutes 25.031[6] and Florida Appellate Rules 4.61(a),[7] as interpreted in *Green v. American Tobacco Company*, 304 F.2d 70 (CA 5, 1962); *Green v. American Tobacco Company*, Fla., 164 So.2d 169 (1963); *Clay v. Sun Insurance Office*, 363 U.S. 207, 212, 80 S.Ct. 1222 (1960).

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[6]Supreme Court authorized to receive and answer certificates as to state law from federal appellate courts.—The supreme court of this state may, by rule of court, provided that, when it shall appear to the supreme court of the United States, to any circuit court of appeals of the United States, or to the court of appeals of the District of Columbia, that there are involved in any proceeding before it questions or propositions of the law of this state, which are determinative of the said cause, and there are no clear controlling precedents in the decisions of the supreme court of this state, such federal appellate court may certify such questions or propositions of the laws of this state to the supreme court of this state for instructions concerning such questions or propositions of state law, which certificate the supreme court of this state, by written opinion, may answer." Fla. Stat. 25.031.

[7]When Certified. When it shall appear to the Supreme Court of the United States, or to any of the Courts of Appeal of the United States that there are involved in any proceeding before it questions or propositions of law of this state which are determinative of said cause and that there are no clear controlling precedents in the decisions of the Supreme Court of this state, such federal appellate court may certify such questions or propositions of law of this state to the Supreme Court of Florida for instructions concerning such questions or propositions of state law." Florida Appellate Rules 4.61(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the within Petition for Certiorari were mailed, air mail, with sufficient postage prepaid to the Honorable THURGOOD MARSHALL, Solicitor General of the United States, Department of Justice, Washington 25, D. C., and that three additional copies were mailed, air mail, with sufficient postage prepaid to LEE A. JACKSON, Esq., Chief Appellate Section, Tax Division, Department of Justice, Washington 25, D. C., this 31st day of December, 1965.